

**REMARKS**

In the Office Action dated February 9, 2006 (the "OA"), the Examiner rejected claims 1-12 and 14-22 and withdrew from consideration claims 13 and 23 as non-elected claims. In the present amendment, Applicants cancel claim 22 without disclaimer or prejudice to the introduction of the subject matter in another application. Following entry of the present amendment, claims 1-12 and 14-21 are pending for examination.

**Amendment to the Title**

Applicants have amended the title of the application to more clearly reflect the claimed invention.

**Rejection of Claims 3 and 21 and Claims 1-12 and 14-21  
Under 35 U.S.C. § 112, First Paragraph**

The Examiner rejected claims 3 and 21 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. *See* OA at 2. Specifically, the Examiner stated that one of ordinary skill in the art would not know how "to make and/or use the invention with respect to the strain FC 58 or FERM BP-8388." OA at 3. According to the Examiner, if a strain is required to practice the claimed invention, the strain must either be known and readily available to the public (by filing a deposit of the strain under 37 C.F.R. § 1.802) or there must be a repeatable method for obtaining the strain provided in the specification. *See id.*

Further, the Examiner rejected claims 1-12 and 14-22, also under 35 U.S.C. § 112, first paragraph, for lack of disclosure of the best mode. The Examiner stated:

Evidence of the best mode is based upon the examples whereby there is a comparison of the various species, which demonstrates that the FC 58 or accession number FERM-8388 clearly is superior to the other species. One can not practice the invention based on the above paragraph non-enabling disclosure. OA at 4.

Applicants respectfully traverse. First, Claim 22 has been cancelled. Second, solely to facilitate prosecution and without acquiescing to the Examiner's belief that the claims are not enabled and do not set forth the best mode, Applicants provide a receipt of deposit under the Budapest Treaty, the "Receipt in the Case of an Original Deposit" ("Receipt"). According to this Receipt, the strain was deposited on June 10, 2002 with the National Institute of Advanced Industrial Science and Technology, an International Patent Organism Depository, and was transferred to a deposit under the Budapest Treaty on May 28, 2003. The Receipt was previously filed with the USPTO on December 27, 2004, when this Application was filed, as indicated on the enclosed copy of the postcard, but Applicants enclose a courtesy copy of this Receipt (with a translation).

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 3 and 21 under 35 U.S.C. § 112, first paragraph, for lack of enablement, and of claims 1-12 and 14-21 under 35 U.S.C. § 112, first paragraph, for lack of disclosure of best mode.

### **CONCLUSION**

Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of claims 1-12 and 14-21. In the event that the Examiner does not find the claims allowable, Applicants request that the Examiner contact the undersigned at (650) 849-6611 to set up an interview.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: April 19, 2006

By: Elisabeth Barek  
Elisabeth Jaffe Barek  
Reg. No. 46,797

Attachments: Copy of the "Receipt in the Case of an Original Deposit" (2 pages)  
Copy of the OIPE receipt-stamped postcard from December 27, 2004